

Item 1. Text of the Proposed Rule Change

(a) Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend its Fee Schedule by increasing the transaction fees associated with certain auction fee codes. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on December 18, 2024.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Matt Iwamaye, Vice President, Associate General Counsel, (732) 687-9355, Cboe BZX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to amend its Fee Schedule by increasing the transaction fees associated with certain auction fee codes.¹ The Exchange assesses fees for orders in BZX listed securities that execute in an Opening, Initial Public Offering (“IPO”), Halt, or Closing Auction (collectively, “Auction Fees”). Now, the Exchange proposes to modify certain Auction Fees provided under the Fee Codes and Associated Fees section of the

¹ The Exchange initially proposed to amend its Fee Schedule on December 20, 2024 (SR-CboeBZX-2024-129), which was effective on January 2, 2025. On January 3, 2025, the Exchange withdrew that filing and submitted this proposal. On January 7, 2025, the Exchange withdrew that filing and submitted this proposal.

Fee Schedule. First, the Exchange proposes to increase the fee associated with fee code AC,² which is currently \$0.0010 per share, to \$0.0011 per share. Second, the Exchange proposes to increase the fee associated with fee code AL,³ which is currently \$0.0010 per share, to \$0.0011 per share. Third, the Exchange proposes to increase the fee associated with fee code AN,⁴ which is currently \$0.0006 per share, to \$0.0011 per share. Fourth, the Exchange proposes to increase the fee associated with fee code AO,⁵ which is currently \$0.00075 per share, to \$0.0013 per share. Finally, the Exchange proposes to increase the fee associated with fee code AP,⁶ which is currently \$0.00075 per share, to \$0.0013 per share.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Securities Exchange Act of 1934 (the “Act”),⁷ in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities.

² Fee code AC is appended to orders executed in the Closing Auction in BZX listed securities.

³ Fee code AL is appended to orders executed in the Closing Auction and Late-Limit-On-Close orders in BZX listed securities.

⁴ Fee code AN is appended to continuous book orders that are executed in the Opening or Closing Auction in BZX listed securities.

⁵ Fee code AO is appended to order executed in an Opening, IPO or Halt Auction in BZX listed securities.

⁶ Fee code AP is appended to orders executed in the Opening, IPO or Halt Auction in BZX listed securities as well as Late-Limit-On-Open orders in BZX listed securities.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that its proposal to increase the Auction Fees applicable to fee codes AC,⁹ AL,¹⁰ AN, AO, and AP are fair, equitable and reasonable because the proposed Auction Fees remain consistent with pricing offered by competitor exchanges. Indeed, the proposed Auction Fee increases are in almost all instances less than the opening and closing auction fees assessed by the Exchange's two competitors, Arca and Nasdaq.

Specifically, NYSE Arca, Inc. ("Arca")¹¹ charges, in securities priced at or above \$1.00, a fee of either \$0.0012 per share or \$0.0015 per share to executions resulting from "auction orders".¹² In securities priced below \$1.00, Arca charges 0.1% of the dollar value, which is applied to all auction orders. Lastly, Arca charges a fee of \$0.0006 per share for executions in an auction, other than "auction orders".¹³ Additionally, Nasdaq Stock Market, LLC ("Nasdaq") charges \$0.0015¹⁴ share for market-on-open, limit-on-open, and Regular Hours Orders¹⁵ that execute in Nasdaq's opening cross. In addition, Nasdaq charges a fee of \$0.0011¹⁶ per share for imbalance only orders and Continuous

⁹ The Exchange notes that it does not propose to change the fee for fee codes AC and AL from "free" to \$0.0011. As such, Lead Market Makers ("LMMs") in BZX-listed securities will continue to transact for free in the BZX Closing Auction.

¹⁰ Id.

¹¹ See Arca Fee Schedule, Fees and Charges, pg. 2, II. Standard Rates - Transactions (applicable when Tier Rates do not apply), Opening Orders, and Closing Orders, available at: https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

¹² The Arca fee schedule states that "auction orders" means market orders, market-on-close orders, limit-on-close orders and auction-only orders executed in an Arca auction. Id. at pg. 1, Section I. Definitions.

¹³ Id. at pg. 3, Section IV. Other Standard Rates for Securities with a Per Share Price \$1.00 or Above.

¹⁴ See NASDAQ Crossing Network, Execution Fees for the NASDAQ Opening Cross, available at: <https://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

¹⁵ For the purposes of the NASDAQ Opening Cross, Nasdaq's fee schedule fines a Regular Hours Order as "GTC, IOC and DAY orders, executable between 9:30 a.m. and 4:00 p.m., Eastern Time, including during the Opening Cross." Id.

¹⁶ Id.

Book¹⁷ orders that participate in Nasdaq's opening cross. Nasdaq charges fees for its closing cross based on a member's percentage of consolidated volume or market-on-close/limit-on-close volume.¹⁸ These fees range from \$0.0008 per share to \$.0016 per share.

The Exchange notes that while BZX seeks to increase the fees for its Opening Auction¹⁹ and Closing Auction,²⁰ its proposed Auction Fees remain lower than those currently charged by Arca. For instance, the proposed fee of \$0.0011 per share for fee codes AC, AL, and AN, which applies to Eligible Auction Orders²¹ designated for the Closing Auction and Continuous Book²² orders executed in the BZX Closing Auction, is \$0.0001 per share less (i.e., \$0.0011 vs. \$0.0012²³) than that currently assessed by Arca for non-retail orders executed in their closing auction. Similarly, the Exchange's proposed fee of \$0.0013 per share for fee codes, AO and AP, which applies to Eligible Auction Orders designated for the BZX Opening Auction, is \$0.0002 per share less

¹⁷ For the purposes of the NASDAQ Opening Cross, Nasdaq's fee schedule defines a Continuous Book Order as "all quotes and extended hours orders (X) orders eligible to participate in the cross." Id.

¹⁸ See NASDAQ Crossing Network, Execution Fees for the NASDAQ Closing Cross, available at: <https://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

¹⁹ See Rule 11.23(b).

²⁰ See Rule 11.23(c).

²¹ The term "Eligible Auction Order" shall mean any MOO, LOO, LLOO, MOC, LOC, or LLOC order that is entered in compliance with its respective cutoff for an Opening or Closing Auction, any RHO order prior to the Opening Auction, any limit or market order not designated to exclusively participate in the Closing Auction entered during the Quote-Only Period of an IPO Auction subject to the below restrictions, and any limit or market order not designated to exclusively participate in the Opening or Closing Auction entered during the Quote-Only Period of a Halt Auction. See Rule 11.23(a)(8).

²² The term "Continuous Book" shall mean all orders on the BZX Book that are not Eligible Auction Orders. See Rule 11.23(a)(7).

²³ Supra note 9.

(\$0.0013 vs. \$0.0015²⁴) than the fee assessed by Arca for non-retail orders executed in its opening auction. Furthermore, the proposed fee of \$0.0011 per share for fee code AN, which applies to Continuous Book orders executed in the BZX Opening Auction, is \$0.0004 per share less (\$0.0011 vs. \$0.0015²⁵) than the fee assessed by Arca for non-retail orders executed in its opening auction.

Likewise, the proposed fee of \$0.0013 for fee codes AO and AP is \$0.0002 less (\$0.0013 vs. \$0.0015²⁶) than those charged by Nasdaq for market-on-close, limit-on-close, and Regular Hours orders that execute in the Nasdaq opening cross. Notably, the proposed fee of \$0.0011 for fee codes AC, AL, and AO, which is appended to Eligible Auction Orders for the BZX Closing Auction, is less than the closing cross fees assessed by Nasdaq for Tiers D, E, and F, which charge \$0.00135, \$0.00145, and \$0.0016²⁷ per share, respectively, each of which is greater than the fee proposed by the Exchange. While Nasdaq's closing cross fees for Tiers A,²⁸ B,²⁹ and C³⁰ are less than the Exchange's proposed Closing Auction fees, paying such reduced fees is contingent upon a Nasdaq member trading certain percentage of volume. The Exchange does not offer tiered pricing for its Closing Auction.

²⁴ Id.

²⁵ Id.

²⁶ Supra note 14.

²⁷ Supra note 18.

²⁸ Tier A: Shares of added liquidity provided in all Tapes through one or more of its MPIDs that represent above 1.75% of Consolidated Volume or MOC/LOC volume above 0.50% of Consolidated Volume: \$0.0008 per executed share. Id.

²⁹ Tier B: Shares of added liquidity provided in all Tapes through one or more of its MPIDs that represent above 0.80% to 1.75% of Consolidated Volume or MOC/LOC volume above 0.30% to 0.50% of Consolidated Volume: \$0.0011 per executed share. Id.

³⁰ Tier C: Shares of added liquidity provided in all Tapes through one or more of its MPIDs that represent above 0.50% to 0.80% of Consolidated Volume or MOC/LOC volume above 0.10% to 0.30% of Consolidated Volume: \$0.0012 per executed share. Id.

The Exchange also believes that its proposal to increase the Auction Fees applicable to fee codes AC, AL, AN, AO, and AP is fair, equitable and reasonable because the proposed Auction Fees do not represent a significant departure from the Exchange's general pricing structure. Specifically, the proposed Auction Fees of \$0.0011 for fee codes AC, AL, and AN are in-line with the fees currently assessed by the Exchange for orders routed to an away listing market for participation in the closing process (i.e., orders yielding fee code CL, \$0.0010)³¹ and the proposed fee of \$0.0013 for Fee Codes AO and AP is less than the fee currently assessed by the Exchange for orders routed to an away listing market for participation in the opening or re-opening cross (i.e., orders yielding fee code O, \$0.0015).³² Therefore, the Exchange believes the proposed Auction Fees associated with fee codes AC, AL, AN, AO and AP remain consistent with pricing offered by a competing exchange for orders routed to their exchange for their opening or closing process, and do not represent a significant departure from the Exchange's general pricing structure.

Furthermore, the marketplace for listings is extremely competitive and there are several other national securities exchanges that offer Exchange-Traded Product ("ETP") listings. Transfers between listing venues occur frequently and for numerous reasons, such as market quality, which includes executions in the opening and closing auctions. Accordingly, competitive forces constrain the Exchange's auction fees, and issuers can transfer listings to competing listing venues if they deem the listing fees or market quality

³¹ For orders routed from BZX to the listing market for the closing process, the Exchange charges a fee of \$0.0010.

³² For orders routed from BZX to the listing market for the opening or re-opening cross, the Exchange charges a fee of \$0.0015.

at those other venues to be more favorable. The proposed rule changes reflect a competitive pricing structure, which, as noted above, is substantively similar to fees charged by Arca and Nasdaq. Moreover, the Exchange notes that it last increased its Auction Fees in December 2021,³³ and believes that its proposed increases in Auction Fees is commensurate with the competitive forces discussed above.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because Members will continue to have the option to elect to submit their orders for participation in auctions for BZX listed securities in the same manner and will be automatically and uniformly assessed the applicable fees for such auction orders. Auction participation on the Exchange is optional, and the Exchange operates in a competitive environment where issuers can transfer listings to competing listing venues if they deem the listing fees or market quality at those other venues to be more favorable.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed modifications represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors, as discussed above. Issuers may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of ETP issuers or competing venues to maintain their competitive standing in the

³³ See SR-CboeBZX-2021-080, available at: https://cdn.cboe.com/resources/regulation/rule_filings/approved/2021/SR-CboeBZX-2021-080.pdf.

financial markets. The Exchange also does not believe the proposed fees would burden intramarket competition as they would be assessed to all Members who participate in Exchange auctions uniformly.

Item 5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

Item 6. Extension of Time Period for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act³⁴ and Rule 19b-4(f)(2)³⁵ thereunder.

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the “Commission”). At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 17 CFR 240.19b-4(f)(2).

Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

(c) Not applicable.

(d) Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibits 2-4. Not applicable.

Exhibit 5. Proposed rule text.